

In The Matter Of:
Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

CONTINENTAL COURT REPORTERS, INC.-Houston
2777 Allen Parkway, Suite 600
Houston, Texas 77019-2166
(713) 522-5080 | (800) 779-6981
www.TexasDepos.com

COPY

Original File 130412CJ_ts.txt
Min-U-Script® with Word Index

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

Page 1			Page 3		
1	IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA		1	INDEX	
2	FREE SPEECH COALITION, *		2	Appearances	2
3	INC., et al, *		3	Stipulations	1
4	Plaintiffs, * CASE NO. 2:09-4607		4	SSA CHARLES JOYNER	
5	vs. *		5	Examination by Mr. Murray	6
6	THE HONORABLE ERIC H. * JUDGE MICHAEL M. BAYLSON		6	Examination by Ms. Wyer	267
7	HOLDER, JR., Attorney *		6	Further Examination by Mr. Murray	268
8	General. *		7		
9	Defendant. *		8	Changes and Signature	275
10	*****		9	Reporter's Certificate	277
11	ORAL DEPOSITION OF		10		
12	SSA CHARLES JOYNER		11	EXHIBITS	
13	APRIL 12, 2013		12	No. Description	Page
14	*****		13	1 Regulatory Inspection Report of The Agency 8/20/2007	6
15	ORAL DEPOSITION of SSA CHARLES JOYNER,		14	2 Regulatory Inspection Report of Bacchus Video Releasing, Inc. 6/19/2007	6
16	produced as a witness at the instance of the		15	3 Regulatory Inspection Report of Darkside Entertainment 9/12/2006	6
17	Plaintiffs, and duly sworn, was taken in the		16	4 Regulatory Inspection Report of A. Lords Productions, LLC 9/17/2007	6
18	above-styled and numbered cause on the 12th day of		17	5 Regulatory Inspection Report of All Good Video 8/16/2006	6
19	April, 2013, from 8:58 a.m. to 4:11 p.m. before me,		18	6 Regulatory Inspection Report of Angry Young Man 3/27/2007	6
20	Jodi Wells, CSR, in and for the State of Texas,		19	7 Regulatory Inspection Report of Shooting Star Video 8/22/2007	6
21	reported by machine shorthand, at the U.S. Attorney's		20	8 Regulatory Inspection Report of Candid Cam Productions 9/18/2007	6
22	Office, 1000 Louisiana, Suite 2300, Houston, Texas		21		
23	77002, pursuant to Notice and the Federal Rules of		22		
24	Civil Procedure and the provisions stated on the		23		
25	record attached hereto.		24		
			25		
Page 2			Page 4		
1	APPEARANCES		1	9 Regulatory Inspection Report of Cinema Play Entertainment 6/27/2007	6
2			2		
3	FOR THE PLAINTIFFS:		3	10 Regulatory Inspection Report of Darkside Entertainment 4/9/2007	6
4	Mr. J. Michael Murray		4	11 Regulatory Inspection Report of Dead Men Hanging Productions 3/13/2007	6
5	BERKMAN, GORDON, MURRAY & DEVAN		5		
6	55 Public Square, Suite 2200		6	12 Regulatory Inspection Report of Diabolic Video Production 7/24/2006	6
7	Cleveland, Ohio 44113-1949		7		
8	Telephone: (216) 781-5245		8	13 Regulatory Inspection Report of Don Goo Enterprises 5/22/2007	6
9	Facsimile: (216) 781-8207		9		
10			10	14 Regulatory Inspection Report of Erotic Angel 12/19/2006	6
11			11	15 Regulatory Inspection Report of Evasive Angles 9/27/2006	6
12			12		
13	FOR THE DEFENDANT:		13	16 Regulatory Inspection Report of Ghost Pro Productions, Inc. 9/18/2007	6
14	Ms. Kathryn L. Wyer		14		
15	U.S. Department of Justice, Civil Division		15	17 Regulatory Inspection Report of Gentlemen's Video 7/19/2007	6
16	20 Massachusetts Avenue Northwest		16		
17	Washington, D.C. 20001		17	18 Regulatory Inspection Report of Real Wild Girls (RWG) Media, Inc. 9/17/2007	6
18	Telephone: (202) 616-8475		18		
19	Facsimile: (202) 616-8470		19	19 Regulatory Inspection Report of Moonlight Entertainment 5/3/2007	6
20			20	20 Regulatory Inspection Report of Pony Boy Films 9/19/2007	6
21			21	21 Regulatory Inspection Report of Private 11/16/2006	6
22			22		
23			23	22 Regulatory Inspection Report of Robert Hill Releasing Company 8/1/2006	6
24			24		
25			25		

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

	Page 5		Page 7
1 23	Regulatory Inspection Report of Robert Hill Releasing Company 3/21/2007	6	(08:59-09:00)
3 24	Regulatory Inspection Report of Silver Star 9/11/2006	6	1 it. Is that agreeable?
4 25	Regulatory Inspection Report of Shane's World Studios 5/7/2007	6	2 A. Yes, sir.
6 26	Regulatory Inspection Report of Temptations 8/2/2007	6	3 Q. And the last request I have of you is: I will
7 27	Regulatory Inspection Report of Tennervision 10/10/2006	6	4 do the best I can to wait for you to complete your
9 28	Regulatory Inspection Report of JT Video 5/31/2007	6	5 answer before I begin another question. Could I have
10 29	Regulatory Inspection Report of Wicked Pictures 1/24/2007	6	6 your agreement that you will make sure to do your best
12 30	145C-LA-245111 Authentic Supplement	6	7 to wait for me to complete my question before you
13 31	145C-LA-245111 Pictures	6	8 begin your answer?
14 32	FBI letter to Bacchus dated June 19, 2007	6	9 A. I will.
15 33	FBI letter to Gentlemen's Video dated July 19, 2007	6	10 Q. Okay. Thank you. And if you need a break at
17 34	FBI letter to Moonlight Entertainment dated March 21, 2007	6	11 any time, just let us know.
19 39	Section 2257 Record keeping requirements, 18 USCA Section 2257	6	12 A. Okay.
20 41	Code of Federal Regulations 28 Part 43 to End as of July 1, 2005	6	13 Q. Now, tell us what your current occupation is.
22 42	Electronic Code of Federal Regulations, Part 75	6	14 A. I'm retired. So, I'm self-employed.
23 44	Title 18 - Crimes and Criminal Procedure, Section 2257, pages 467 through 469	6	15 Q. Okay. In what kind of business?
25			16 A. I do -- I wrote a book. I do consulting, and 17 I also do training.
			18 Q. Okay. Just, generally speaking, what kind of 19 consulting and training do you do?
			20 A. Primarily for law enforcement on use of force 21 and liability or excessive force cases.
			22 Q. Okay. Are you an expert witness from time to 23 time in court cases?
			24 A. Yes. I could be.
			25 Q. Okay. Good. Okay. So when did you retire
(08:58-08:59)		Page 6	Page 8
1	(Exhibit Nos. 1 through 44 premarked)		(09:00-09:01)
2	SSA CHARLES JOYNER,		1 from the Government service?
3	having been duly sworn, testified as follows:		2 A. October of 2011.
4	EXAMINATION		3 Q. And, briefly, why don't you tell me what your
5	BY MR. MURRAY:		4 career was in the Government, what assignments?
6	Q. Would you please state your full name and		5 A. With the FBI?
7	address for the record, sir?		6 Q. Well, even before that. Where did you start
8	A. Charles R. Joyner, J-O-Y-N-E-R, address P.O.		7 out?
9	Box 571073, Houston, Texas 77257.		8 A. With the Federal Government, I started with
10	Q. Now, Agent Joyner, I'm going to ask you a		9 the CIA.
11	series of questions and I'm going to do the best I can		10 Q. Okay.
12	to make them clear and understandable.		11 A. That was 1983 to 1987. I joined the FBI in
13	A. I'm no longer an agent.		12 1987 and was assigned to Los Angeles primarily working
14	Q. That's all right. I think you're entitled --		13 violent crimes. Later I was on the SWAT team. I then
15	A. Oh, okay.		14 became a full-time firearms instructor, later the
16	Q. -- to the respect of that title still.		15 principal firearms instructor, which meant I was in
17	A. Thank you.		16 charge of all the firearms defensive tactics, chemical
18	Q. And I'm going to try to make my questions		17 agent training.
19	clear and understandable. Can I have your agreement,		18 After that I became a supervisor over training
20	however, that if you do not understand one of my		19 and the critical incident programs. And critical
21	questions you will bring that to my attention?		20 incident programs are SWAT, bomb techs, HazMat, WMD.
22	A. Yes, sir.		21 From there I became the supervisor over the 2257
23	Q. Thank you. The next request I have of you is		22 program.
24	to make sure that all your answers are verbal rather		23 Q. Okay. And, so, how many years did you spend
25	than gestures so that our court reporter can record		24 in the FBI? From '87 to '11? Is that what you're
			25 saying?

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.SSA Charles Joyner
April 12, 2013

<p>(09:01-09:02)</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. So, in 2006, where were you stationed 3 when this program began?</p> <p>4 A. In Los Angeles.</p> <p>5 Q. And what was your assignment before this 6 program? Just general duties?</p> <p>7 A. I was a supervisor over training in the 8 critical incident programs.</p> <p>9 Q. Okay. And tell me how you got involved in 10 2006 in the 2257 inspection program.</p> <p>11 A. The FBI was told to set up an inspection 12 program, and I was tasked with doing that.</p> <p>13 Q. So you were the one in charge of putting the 14 program together?</p> <p>15 A. Initially there were two supervisors that were 16 named to start the program. The other supervisor had 17 other duties that he couldn't get away with -- get 18 away from. So I was primarily responsible for setting 19 up the training and the policy and the buildings and 20 the supplies, and then later they advertised for a 21 second supervisor to come in.</p> <p>22 Q. And who did that end up being?</p> <p>23 A. Steve Lawrence.</p> <p>24 Q. And he was a Supervising Special Agent as 25 well?</p>	Page 9	<p>(09:04-09:05)</p> <p>1 Q. (Indicating)</p> <p>2 A. Okay.</p> <p>3 MS. WYER: Objection.</p> <p>4 Q. (By Mr. Murray) So this statute requires 5 every producer of books, magazines, periodicals, 6 films, videotapes or other matter to create records, 7 correct, if they contain sexual images that are actual 8 sexually explicit conduct?</p> <p>9 A. Okay.</p> <p>10 Q. Is that your understanding of the statute?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And it requires the producer to collect 13 IDs from any performers in films or other media that 14 has sexually explicit conduct, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. It requires them to maintain the records, 17 correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. To maintain them by title and name of 20 performer, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Cross-index them as well, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. It also requires them to put a label on 25 the book, the film, or in the case of a computer web</p>	Page 11
<p>(09:02-09:04)</p> <p>1 A. Yes, sir.</p> <p>2 Q. And when did he come on-board approximately?</p> <p>3 A. I don't remember. We started, I believe, in 4 May of 2006. I think he came on-board, I'm guessing, 5 November, December 2006, but I'm not certain.</p> <p>6 Q. Okay. Now, as a consequence of being assigned 7 to put this program together, you needed to 8 familiarize yourself with 2257 and its implementing 9 regulations, did you not?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And I want to show you what has been 12 marked as Plaintiff's Exhibit 44.</p> <p>13 MS. WYER: Could I have a copy?</p> <p>14 MR. MURRAY: You know, I do have an extra 15 copy of this. I don't have an extra copy of these 16 though. I could only bring the original and one, but 17 you have all those.</p> <p>18 MS. WYER: Well, not with me.</p> <p>19 Q. (By Mr. Murray) Plaintiff's Exhibit 44, 20 you're familiar with that, are you not?</p> <p>21 A. I recognize it as being a 2257 statement.</p> <p>22 Q. Okay. If you go to the second page of that 23 exhibit, you will see that this is 2257 as it existed 24 on April 30, 2003. Do you see that?</p> <p>25 A. I don't.</p>	Page 10	<p>(09:05-09:06)</p> <p>1 site on the web site, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And it also requires them to make 4 records available to the Attorney General or his 5 designee at any reasonable time, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. Now, do you know whether this was the 8 statute that was in effect at the time that you began 9 putting together the program, this version of the 10 statute?</p> <p>11 A. I don't know. I do know that at the time I 12 had downloaded a copy that, I believe, was dated 2006 13 or 2007.</p> <p>14 Q. Okay. Let me show you then what has been 15 marked as Plaintiff's Exhibit 39, and you will see 16 that this is the version of 18 USC Section 2257 that 17 was effective as of July 27, 2006; is that correct?</p> <p>18 A. Yes, sir.</p> <p>19 MS. WYER: Objection. No source is 20 identified for where this document came from.</p> <p>21 MR. MURRAY: Well, if you look at the 22 bottom, it came from Westlaw.</p> <p>23 MS. WYER: I can't read it.</p> <p>24 MR. MURRAY: Okay.</p> <p>25 Q. (By Mr. Murray) Well, anyway, does this look</p>	Page 12

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>Page 13 (09:06-09:08)</p> <p>1 like 2257 to you, Agent? If you want to read it, 2 that's fine if need be in order to authenticate that 3 this is the actual statute that was amended as of July 4 27, 2006.</p> <p>5 A. It does look like it's portions of it. It 6 looks a little thin, but yes.</p> <p>7 Q. Well, tell me what you think is missing from 8 2257.</p> <p>9 A. It doesn't seem to be as complete as the 10 previous version. So I don't know if this is just 11 some revisions or not.</p> <p>12 Q. Well, take a look at it because it's important 13 to make sure that we agree that this is the statute 14 that was in effect as of July 27, 2006.</p> <p>15 A. Okay. It seems to be in a different format, 16 but it seems to be the same document.</p> <p>17 Q. Okay. Now, I will tell you that this is the 18 current statute just so that we're on the same page.</p> <p>19 I will represent to you that --</p> <p>20 A. July 27, 2006.</p> <p>21 Q. Yes. As a matter of fact, you know that the 22 Adam Walsh Act was the act by which the 2257 was last 23 amended, at least in terms of when you were in 24 service, correct?</p> <p>25 A. I don't know if that was the last correction</p>	<p>(09:09-09:10)</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And you did that pursuant to the 3 authority of 2257 and the implementing regulations 4 that were in existence at the time that you carried 5 out those duties, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And the first of those inspections 8 occurred on July 24, 2006. Does that sound right to 9 you? And we'll go through these.</p> <p>10 A. Okay. I do recall the first one was in 11 July --</p> <p>12 Q. Okay.</p> <p>13 A. -- 2006.</p> <p>14 Q. Every other inspection occurred, did it not, 15 after July 27, 2006?</p> <p>16 A. I don't know the time period between the first 17 inspection and the second inspection. I don't 18 remember that.</p> <p>19 Q. Okay. Well, we'll go through that.</p> <p>20 A. Okay.</p> <p>21 Q. In any case, whatever version of the statute 22 was in effect at the time that you carried out those 23 duties was the one that you were acting pursuant?</p> <p>24 MS. WYER: Objection. Calls for a legal 25 conclusion.</p>
<p>Page 14 (09:08-09:09)</p> <p>1 or last amendment.</p> <p>2 Q. Okay. The July 27, 2006 version of the 3 statute which is the current statute is the --</p> <p>4 A. Okay.</p> <p>5 Q. -- is the version that you acted pursuant to 6 with respect to all but one of the 29 inspections that 7 you carried out; isn't that true?</p> <p>8 MS. WYER: Objection. Objection; 9 misleading.</p> <p>10 Q. (By Mr. Murray) You can answer. She makes 11 objections for the record; but unless she instructs 12 you not to answer the question --</p> <p>13 A. Okay. Could you repeat the question, please?</p> <p>14 Q. Yes. You had a program by which you carried 15 out a certain number of inspections pursuant to 2257 16 and its implementing regulations; isn't that true?</p> <p>17 A. That's correct.</p> <p>18 Q. And you put together that program and you 19 ultimately were in charge of what led to a total of 29 20 inspections; isn't that true?</p> <p>21 A. In terms of the number that we did, I don't 22 remember, but that sounds correct.</p> <p>23 Q. Okay.</p> <p>24 A. Yes.</p> <p>25 Q. Approximately 29?</p>	<p>Page 16 (09:10-09:11)</p> <p>1 Q. (By Mr. Murray) Is that correct?</p> <p>2 MS. WYER: The witness is not a lawyer 3 and does not know all of the details of that kind 4 of --</p> <p>5 MR. MURRAY: Are you going to make 6 speaking objections throughout this deposition? You 7 can make your objection, and you can either instruct 8 him not to answer or let him answer; but you're not 9 entitled to tell him the answer to give through a 10 speaking objection.</p> <p>11 A. Could you repeat the question, please?</p> <p>12 Q. (By Mr. Murray) Sure. You acted in 13 connection with this program pursuant to a statute 14 known as 18 USC 2257, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And the regulations that implemented that 17 statute, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And you read and studied that statute and 20 those regulations, did you not, at the time that you 21 put this program together?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you familiarized yourself with those -- 24 that statute and those regulations so that you could 25 act in accordance with them; isn't that true?</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>(09:11-09:12)</p> <p>1 A. Yes, sir.</p> <p>2 Q. Now, you will see that -- if you go to the 3 second page of Plaintiff's Exhibit 39, you will see 4 that under (f)(5) at the very bottom it says, "It 5 shall be unlawful (5) for any person to whom 6 subsection (a) applies to refuse to permit the 7 Attorney General or his or her designee to conduct an 8 inspection under subsection (c)"; is that correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And you knew that and were familiar with that 11 provision, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And, in fact, you knew that that was a 14 provision that was added in the amendment that became 15 effective July 27, 2006, correct?</p> <p>16 MS. WYER: Objection.</p> <p>17 A. I wasn't aware when that was added, and I'm not -- again, we're talking about something six, seven years ago. So, when these changes occurred, I don't know.</p> <p>18 Q. (By Mr. Murray) Okay. But you acted pursuant 19 to the authority that included that section (f)(5), 20 correct --</p> <p>21 MS. WYER: Objection.</p> <p>22 Q. -- when you carried out most of the</p>	Page 17	<p>(09:13-09:15)</p> <p>1 this title, or both," correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And you know from reading that that type of 4 penalty makes this statutory provision a felony if you 5 violate it, correct?</p> <p>6 MS. WYER: Objection. Asked and 7 answered.</p> <p>8 A. Yes, sir.</p> <p>9 Q. (By Mr. Murray) Is that correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Now, I want to show you what has been 12 marked as Plaintiff's Exhibit 42 and ask if you can 13 tell me whether or not you familiarized yourself with 14 part 75 of the Code of Federal Regulations when you 15 were carrying out your 2257 inspection program.</p> <p>16 A. This one is dated April 5, 2013. So I don't know if this has been amended since the time we were doing inspections; but, yes, we also reviewed Code of Federal Regulations 75.</p> <p>17 Q. Okay. And you can see from the -- let me show 18 you where to look. If you'll look there --</p> <p>22 A. Okay.</p> <p>23 Q. -- it indicates that the source was an order 24 issued on May 25, 2005, unless otherwise noted; is 25 that correct?</p>	Page 19
<p>(09:12-09:13)</p> <p>1 inspections?</p> <p>2 A. It was my understanding during the inspections that that person did not have the legal right to refuse the inspection --</p> <p>5 Q. Okay. Now, and in fact --</p> <p>6 A. -- as long as we met the parameters within the guidelines.</p> <p>8 Q. Right. And, in fact, it would be a felony for 9 the person under this statute to refuse to permit the 10 Attorney General or his designee to conduct the 11 inspection, correct?</p> <p>12 A. I wasn't aware if it was a felony or a misdemeanor.</p> <p>14 Q. Well, did you -- you weren't familiar with 15 whether or not the statutory provisions -- take a look 16 at the last page of this statute, section (i).</p> <p>17 A. Okay.</p> <p>18 Q. Do you see it states that "Whoever violates 19 this section shall be imprisoned for not more than 20 five years and fined in accordance with the provisions 21 of this title, or both. Whoever violates this section 22 after having been convicted of a violation punishable 23 under this section shall be imprisoned for any period 24 of years not more than ten years but not less than two 25 years and fined in accordance with the provisions of</p>	Page 18	<p>(09:15-09:17)</p> <p>1 A. That's correct.</p> <p>2 Q. So any of -- to the extent that any of these 3 provisions were in effect since May 24, 2005, you 4 would have acted pursuant to whatever regulations 5 existed as of that date, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And if you turn to -- you'll notice 8 that we've put numbers on the bottom left. We've 9 paginated all these documents.</p> <p>10 A. Okay.</p> <p>11 Q. Turn to page 3273 of this exhibit.</p> <p>12 A. Okay.</p> <p>13 Q. And do you see that section 75.5 is the 14 regulation pertaining to inspection of records?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And do you see that -- okay. So hold 17 onto that. Let me show you then what has been marked 18 as Plaintiff's Exhibit 41. And, again, can you see 19 that that is Part 75 of the Code of Federal 20 Regulations that was in effect as of July 1st, 2005 21 according to the cover page?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. And you were familiar with those -- 24 that version of the regulations, were you not?</p> <p>25 A. Yes, I was.</p>	Page 20

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>Page 21 (09:17-09:19)</p> <p>1 Q. Okay. Now, if you look at page 3265 of 2 Plaintiff's Exhibit 41 --</p> <p>3 A. Okay.</p> <p>4 Q. -- you see that there is a provision 75.5 5 Inspection of Records; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Now, if you would compare that version 8 of the regulation with the version that is set forth 9 in Plaintiff's Exhibit 42, can you tell me whether or 10 not they are the same or whether there are any 11 differences that you notice?</p> <p>12 MS. WYER: Objection. This is 13 inappropriate.</p> <p>14 A. Okay. You're just asking about paragraph (a)?</p> <p>15 Q. (By Mr. Murray) No. 75.5.</p> <p>16 A. Oh, the entire section? Do you want me to 17 check it word-for-word or just that the general 18 meaning seems to be the same?</p> <p>19 Q. Well, if you can scan it, I think that my 20 representation to you will be that it is the same, but 21 I want you to verify that it looks to be the same to 22 you as well so that we're on the same program here.</p> <p>23 A. Okay. It's not word-for-word the same.</p> <p>24 Q. Where do you find a difference?</p> <p>25 A. (C)(1).</p>	<p>Page 23 (09:21-09:24)</p> <p>1 Okay. In 41, talking about inspections, 2 "Monday through Friday, or any other time during which 3 the producer is actually conducting," and the other 42 4 reads, "local time, Monday through Friday, or for 5 inspections to be held at the place of business of a 6 producer." So, again, there's slight changes in the 7 wording; but, again, the content seems to be the same.</p> <p>8 Q. Okay.</p> <p>9 A. Okay. There's just slight changes in some of 10 the wording, but the meaning appears to be the same 11 for both exhibits.</p> <p>12 Q. The slight wording changes are nonsubstantive. 13 Is that an accurate way to put it?</p> <p>14 MS. WYER: Objection. Calls for a legal 15 conclusion and legal knowledge.</p> <p>16 A. As a layman looking at this, to me, they have 17 the same meaning.</p> <p>18 Q. (By Mr. Murray) Okay. What is your 19 educational background by the way, Agent?</p> <p>20 A. I had a double major in biology and 21 psychology. I have a master's in organizational 22 industrial psychology.</p> <p>23 Q. And where did you achieve those degrees?</p> <p>24 A. University of West Florida.</p> <p>25 Q. All right. So, now, let's talk about the</p>
<p>Page 22 (09:19-09:21)</p> <p>1 Q. Okay.</p> <p>2 A. Inspection shall take place on the -- what 3 exhibit is this? Let me see. Exhibit 42.</p> <p>4 Q. Yes, sir.</p> <p>5 A. I probably lost my place. Let me see.</p> <p>6 It says, "Inspection shall take place during 7 normal business hours," and, yet, in Plaintiff's 8 Exhibit 41, "Inspection shall take place during the 9 producer's normal business hours. So you just have an 10 additional word. So it's not --</p> <p>11 Q. Yes. Correct.</p> <p>12 A. It's not verbatim the same.</p> <p>13 Q. Right. The word "producers" doesn't appear in 14 the -- in 41.</p> <p>15 A. Okay. There are some differences in the 16 words, but the meaning seems to be the same.</p> <p>17 Q. Can you point out some of the other 18 differences that you found?</p> <p>19 A. Yes. In paragraph (c) -- I probably should 20 get a pen so I can remember which one is which.</p> <p>21 Q. Sure.</p> <p>22 A. Okay. This one is 42. Is it okay if I mark 23 on this?</p> <p>24 Q. Yeah. Sure.</p> <p>25 A. Thank you.</p>	<p>Page 24 (09:24-09:25)</p> <p>1 regulation pertaining to inspections, and let's focus 2 on Exhibit 41 which was the one in effect as of May 3 23, 2005.</p> <p>4 A. Okay.</p> <p>5 Q. Under the regulation, you -- and by "you," I'm 6 talking about you in your capacity as implementing the 7 2257 inspection program, you and your colleagues. 8 You were authorized to enter without delay at 9 any reasonable time any establishment of a producer 10 where records were maintained under 2257; isn't that 11 true?</p> <p>12 A. Yes, sir.</p> <p>13 Q. You were authorized to do that without a 14 warrant -- search warrant; isn't that correct?</p> <p>15 MS. WYER: Objection. Calls for legal 16 knowledge.</p> <p>17 A. That's correct. According to the regulations, 18 this is not a search. It's an inspection. So no 19 warrant is necessary.</p> <p>20 Q. (By Mr. Murray) Okay. So you were authorized 21 to conduct this operation of these inspections without 22 a search warrant, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. You were authorized to do it without any 25 probable cause to believe any crime had been</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>(09:25-09:26)</p> <p>1 committed, correct?</p> <p>2 MS. WYER: Objection.</p> <p>3 A. That's correct. Again, this is an inspection.</p> <p>4 It's not a criminal investigation.</p> <p>5 Q. (By Mr. Murray) Okay. This is a criminal 6 statute, however, 2257, isn't it?</p> <p>7 A. Yes, sir.</p> <p>8 Q. It's not just a civil statute, is it?</p> <p>9 A. It's a federal statute.</p> <p>10 Q. You can go to prison for violating it, 11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. I think we agreed a violation of it is 14 felony, did we not?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. All right. So it is correct that you 17 were authorized to enter the premises of a producer 18 without delay, without a warrant, and without any 19 problem cause to believe any crime had been committed; 20 isn't that true?</p> <p>21 MS. WYER: Objection.</p> <p>22 A. That's correct.</p> <p>23 Q. (By Mr. Murray) Okay. The regulation also 24 provides that advanced notice shall not be given to 25 the producer whose premises you're going to enter,</p>	Page 25	<p>(09:27-09:28)</p> <p>1 premises of a private residence within the parameters 2 of this statute and regulation, correct?</p> <p>3 MS. WYER: Objection.</p> <p>4 A. If a company had been randomly selected for an inspection and on their 225 statement they listed that address as the location for those physical records, then we're allowed to go to that physical location to inspect.</p> <p>9 Q. (By Mr. Murray) Right.</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you're allowed to do it without a search 12 warrant and without probable cause, correct?</p> <p>13 MS. WYER: Objection.</p> <p>14 A. That's correct.</p> <p>15 Q. (By Mr. Murray) Okay.</p> <p>16 A. Because it's coming under the parameters of the 2257 inspection.</p> <p>18 Q. Right. And it is true it would be a felony 19 for the person whose premises you sought to enter 20 without delay to refuse to permit you to enter it and 21 carry out the inspection, correct?</p> <p>22 MS. WYER: Objection.</p> <p>23 A. They could prevent us from going into specific areas of their home if it's at a residence if that's what they listed as the physical address for those</p>	Page 27
<p>(09:26-09:27)</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And if the records are maintained at someone's 4 residence, you were authorized to enter there without 5 delay and without advanced notice, correct?</p> <p>6 MS. WYER: Objection.</p> <p>7 A. By the statute, that is correct.</p> <p>8 Q. (By Mr. Murray) And by the regulation?</p> <p>9 A. That was not what was done in practice, but you're correct.</p> <p>11 Q. Okay. And by the regulation, correct, 12 authorized to do that?</p> <p>13 A. Yes, sir.</p> <p>14 MS. WYER: Objection. "Authorized" is 15 undefined.</p> <p>16 Q. (By Mr. Murray) And you were authorized by 17 the statute and regulation to enter a private 18 residence for purposes of an inspection without a 19 search warrant and without probable cause to believe 20 any crime had been committed, correct?</p> <p>21 A. Meeting all the parameters of the inspection and the inspection policies and procedures, yes.</p> <p>23 Q. So, it is true you were not required to obtain 24 a search warrant and you were not required to have 25 probable cause before you were authorized to enter the</p>	Page 26	<p>(09:28-09:29)</p> <p>1 records, but they couldn't prevent us from seeing those records and where those records were stored based on the 2257.</p> <p>4 Q. Okay. So it is correct that it would be a 5 felony for someone at a private residence who 6 maintained 2257 records to refuse to permit you to 7 carry out an inspection under the authority of 2257 8 and its implementing regulations; isn't that true?</p> <p>9 MS. WYER: Objection. Uses legal 10 terminology.</p> <p>11 A. It depends on where those records are located. So, if it's located in the garage, we have access to that garage to review those records. So it depends on where in that residence they kept the records.</p> <p>15 Q. (By Mr. Murray) If they're kept in the garage 16 and the person refuses to let you enter the garage to 17 inspect the records, that's a felony, isn't it?</p> <p>18 A. That would be a violation. Yes, sir.</p> <p>19 Q. Okay. If it's kept in the bedroom and he 20 refuses to let you into the bedroom for purposes of 21 inspecting the records, that's a felony, isn't it?</p> <p>22 MS. WYER: Objection.</p> <p>23 A. If that's where they listed the physical location of those records, then that's the business location in terms of inspections. Yes, sir.</p>	Page 28

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>Page 29 (09:29-09:31)</p> <p>1 Q. (By Mr. Murray) So the answer is yes? 2 A. Yes. 3 Q. Okay. Now, it is also true that the 4 regulation permitted you to conduct inspections during 5 normal business hours which was 9:00 to 5:00 p.m. 6 local time Monday through Friday, correct? 7 A. That's correct. 8 Q. Or at other times if the inspection was to be 9 held at the place of business of a producer and the 10 producer was actually conducting business relating to 11 producing a depiction of actual sexually explicit 12 conduct during hours other than 9:00 to 5:00, correct? 13 A. I'm not aware of that. 14 Q. Take a look at paragraph (c) of 75.5(c) in 15 Plaintiff's Exhibit 41. 16 A. Okay. That's how it reads. 17 Q. So that is correct? 18 A. Yes. 19 Q. And then it also provides that, if the 20 producer doesn't maintain at least 20 normal business 21 hours per week, the producer must provide notice to 22 the inspecting agency of the hours during which 23 records will be available for inspection which in no 24 case may be less than 20 hours per week, correct? 25 A. That's correct.</p>	<p>Page 31 (09:32-09:34)</p> <p>1 hours during which the records will be available for 2 inspection, correct? 3 A. Yes. 4 Q. And the person then must make sure that during 5 those hours the records would be available for 6 inspection, correct? 7 MS. WYER: Objection. Calls for 8 inference. 9 A. According to the CFR 75, it does say that 10 producers must provide notice to the inspecting agency 11 of the hours during which records will be available 12 for inspection which in no case may be less than 20 13 hours per week. 14 Q. (By Mr. Murray) Well, doesn't that make it 15 clear that they must make the records available during 16 the 20 hours that they've designated? 17 MS. WYER: Objection. Clear to who? 18 A. I know how this was handled in practice. I 19 was only asked about it one time for somebody who 20 maintained records at their home. 21 Q. (By Mr. Murray) Well, my question -- we'll 22 get to the practice -- 23 A. Okay. 24 Q. -- when we get to the -- 25 A. Okay.</p>
<p>Page 30 (09:31-09:32)</p> <p>1 Q. So, under this regulation, for someone who has 2 less than 20 normal business hours, the law required 3 that person to send some kind of a notice to whom? 4 The FBI? The Attorney General? Who would they send 5 that to? 6 A. I don't know. 7 Q. But they were required -- 8 A. They could they could send the notice to me. 9 Q. Okay. But if they send it to no one, they 10 would be in violation, correct? 11 MS. WYER: Objection. If you know. 12 A. According to the regulation, it says that the 13 producers must provide notice of the hours during 14 which records will be available. 15 Q. (By Mr. Murray) Right. And if they fail to 16 do so knowingly, that would be a felony, wouldn't it? 17 A. That would be in violation. Yes, sir. 18 MS. WYER: Objection. 19 Q. (By Mr. Murray) And, so, once they give that 20 notice, the person must remain on the premises during 21 the 20 hours that notice was given, correct? 22 MS. WYER: Objection. 23 A. I don't see that. 24 Q. (By Mr. Murray) Well, let's put it this way. 25 The regulation requires the notice to identify the</p>	<p>Page 32 (09:34-09:35)</p> <p>1 Q. -- to the 29 inspections. But my question is: 2 Is it not clear to you, as the person who was in 3 charge of this inspection program and carrying it out, 4 that the person who needs to send the notice of the 20 5 hours per week that the records will be available for 6 inspection has to tell the truth about which hours 7 they'll be available for inspection? 8 MS. WYER: Objection. 9 A. Reading this, the way that I would interpret 10 it is that, yes, it does sound as if they need to be 11 available at least 20 hours per week. 12 Q. (By Mr. Murray) Okay. Now, in terms of the 13 carrying out of the inspection, if you go to 14 75.5(c)(2), it indicates that when you arrive you are 15 to present your credentials, correct? 16 A. Correct. 17 Q. And to explain the nature and purpose of the 18 inspection, correct? 19 A. Yes, sir. 20 Q. And to indicate the scope of the specific 21 inspection and the records that you want to examine, 22 correct? 23 A. Yes, sir. 24 Q. And in paragraph (4) -- and (3) says you're 25 supposed to do the best you can to not unreasonably</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>Page 33 (09:35-09:36)</p> <p>1 disrupt the operations of the place you're inspecting, 2 correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And then (4) says that, at the conclusion of 5 the inspection, you may informally advise the person 6 that you encountered of any apparent violations, 7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Under (d), you're permitted to inspect the 10 records once during any four-month period but more 11 often if you have a reasonable suspicion to believe 12 that a violation has occurred, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. You're permitted under (e) to make copies of 15 any of the records that are maintained under 2257, 16 correct?</p> <p>17 MS. WYER: Objection. Mischaracterizes 18 the language.</p> <p>19 A. According to that paragraph, yes, we can copy 20 the 2257 records that they have on-hand for those 21 items that we had selected for inspection.</p> <p>22 Q. (By Mr. Murray) Okay. And you're in charge 23 of which items you select, correct?</p> <p>24 A. Yes, sir. I was.</p> <p>25 Q. Now, then under (f) it says that the</p>	<p>Page 35 (09:37-09:40)</p> <p>1 areas. We're very restricted into what we can look at 2 and where we can look. It's all related to those 3 records.</p> <p>4 Q. And who gave you these instructions?</p> <p>5 A. It would have been in a series of 6 conversations with the U.S. Attorney's Office, with 7 the FBI's Office of General Counsel.</p> <p>8 Q. I want to show you what has been marked as 9 Plaintiff's Exhibit 34. And if you would show Ms. 10 Wyer that because I don't have an extra copy.</p> <p>11 A. Okay.</p> <p>12 Q. I thought I did. [REDACTED]</p> <p>13 MS. WYER: I need to have my own copies.</p> <p>14 MR. MURRAY: I'm sorry. I can't hear 15 what you're saying.</p> <p>16 MS. WYER: If you're going to be 17 referring to the text of this, I really need to have 18 my own copy so I can --</p> <p>19 MR. MURRAY: Well, I don't really have 20 the ability. These are documents that you provided 21 us. You can see the mountain of materials that I've 22 managed to bring to this. I sent you a letter 23 explaining every subject matter that we were going to 24 cover.</p> <p>25 MS. WYER: Well, you didn't tell me</p>
<p>Page 34 (09:36-09:37)</p> <p>1 regulations do not restrict the otherwise lawful 2 investigative prerogatives of an investigator while 3 conducting an inspection, correct?</p> <p>4 MS. WYER: Objection.</p> <p>5 A. That's what it reads. Correct.</p> <p>6 Q. (By Mr. Murray) And then under (g) it 7 indicates that, notwithstanding any provision of this 8 part or any other regulation, a law enforcement 9 officer may seize any evidence of the commission of 10 any felony while conducting an inspection, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And, again, that would be without a warrant, 13 correct?</p> <p>14 MS. WYER: Objection.</p> <p>15 A. If it's in plain view, yes. We can seize 16 contraband in plain view. Yes, sir.</p> <p>17 Q. (By Mr. Murray) Well, this says "any evidence 18 of the commission of any felony," correct, not just 19 contraband, doesn't it?</p> <p>20 MS. WYER: Objection.</p> <p>21 A. The way that it was explained to us before we 22 started inspections, it was all related to the plain 23 view doctrine. So, if we walked in and you see a 24 rocket launcher in the corner, yes, we can seize it. 25 We don't have the ability to go and search other</p>	<p>Page 36 (09:40-09:42)</p> <p>1 that --</p> <p>2 MR. MURRAY: So I presumed that you would 3 have brought with you or have access to the documents 4 that you provided.</p> <p>5 MS. WYER: You did not tell me that you 6 were not going to provide copies of your exhibits to 7 counsel. It's customary to provide copies to counsel 8 of the exhibits.</p> <p>9 MR. MURRAY: Okay. Well, we have -- you 10 provided us with some 6,000 pages of records 11 pertaining to these inspections.</p> <p>12 MR. SAMONDS: Separate from those, we may 13 have copies. I have brought some copies, but for all 14 the documents which of the smaller copies.</p> <p>15 MR. MURRAY: Yeah. I thought I brought a 16 copy for you, Kathy, of all these smaller ones, and 17 this is the one that I can't seem to find.</p> <p>18 Q. (By Mr. Murray) Which number did I give you, 19 Agent? 34?</p> <p>20 A. 34.</p> <p>21 MR. MURRAY: Why don't you use 35?</p> <p>22 They're identical. I was going to show him that at 23 some point.</p> <p>24 Q. (By Mr. Murray) All right. So we were 25 talking about Plaintiff's Exhibit 32?</p>

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>(09:42-09:43)</p> <p>1 A. 34.</p> <p>2 Q. 34? Okay.</p> <p>3 MR. SAMONDS: Do you have other small</p> <p>4 exhibits that you would like me to go get copies of?</p> <p>5 MR. MURRAY: Yes. Yeah. There's only --</p> <p>6 there were a total of four or five of these letters.</p> <p>7 So, if you want to --</p> <p>8 Q. (By Mr. Murray) All right. Plaintiff's</p> <p>9 Exhibit 34 is a letter that bears your signature, does</p> <p>10 it not?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And this one happens to be addressed to</p> <p>13 correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And it's dated March 21, 2007?</p> <p>16 A. That's correct.</p> <p>17 Q. And that's an establishment where an</p> <p>18 inspection occurred, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And you participated in that inspection?</p> <p>21 A. Yes, I did.</p> <p>22 Q. And at the outset of that inspection, you</p> <p>23 presented the person that you encountered with a copy</p> <p>24 of this letter, correct?</p> <p>25 A. That's correct.</p>	<p>Page 37</p> <p>(09:44-09:46)</p> <p>1 violation of federal law to delay or obstruct the FBI</p> <p>2 from conducting the inspection," correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And you give that notice to the person in this</p> <p>5 letter when you begin the inspection, correct?</p> <p>6 A. That's correct. Well, it was given prior to</p> <p>7 the inspection.</p> <p>8 Q. When you first show up?</p> <p>9 A. When we first arrived, yes, sir.</p> <p>10 Q. Okay.</p> <p>11 (Proceedings interrupted)</p> <p>12 Q. All right. So who did you report to when you</p> <p>13 were given the assignment to develop this program for</p> <p>14 2257? Who was your immediate supervisor?</p> <p>15 A. Allen Anovte.</p> <p>16 Q. And he was stationed in Washington?</p> <p>17 A. He was.</p> <p>18 Q. Okay. And did you keep him abreast of the</p> <p>19 developments in connection with establishing the</p> <p>20 program?</p> <p>21 A. Yes.</p> <p>22 Q. Now, who all was on the team besides yourself?</p> <p>23 A. Originally, it was me and four contract</p> <p>24 inspectors. All four are retired agents.</p> <p>25 Q. Now, tell me what you mean by a contract</p>
<p>(09:43-09:44)</p> <p>1 Q. And this letter advised the person that you</p> <p>2 were conducting an inspection under 2257, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. It advised this person that section (c) of 18</p> <p>5 USC 2257 requires that you make such records available</p> <p>6 to the Attorney General or designee thereof for</p> <p>7 inspection at all reasonable times, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. It advised him that violations of section 2257</p> <p>10 are subject to criminal penalties, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Two paragraphs below that you advised the</p> <p>13 person that, "Pursuant to these laws and regulations,</p> <p>14 the FBI is authorized to enter your place of business</p> <p>15 without delay," correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And you advised this person, "It is a criminal</p> <p>18 violation of federal law to delay or obstruct the FBI</p> <p>19 from conducting the investigation," correct?</p> <p>20 A. That's not correct. It's from conducting the</p> <p>21 inspection.</p> <p>22 Q. I'm sorry. I misspoke.</p> <p>23 A. Okay.</p> <p>24 Q. Thank you.</p> <p>25 The sentence reads, "It is a criminal</p>	<p>Page 38</p> <p>(09:46-09:47)</p> <p>1 inspector.</p> <p>2 A. They were not employees of the FBI. They were</p> <p>3 independent contractors.</p> <p>4 Q. And how did you get them? Did you advertise?</p> <p>5 A. It was advertized.</p> <p>6 Q. Okay. And then what -- and were these all</p> <p>7 retired FBI agents?</p> <p>8 A. The four that were selected were all retired</p> <p>9 FBI agents. Correct.</p> <p>10 Q. But they were independent contractors rather</p> <p>11 than employees when they participated in this program?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. And were they given any training?</p> <p>14 A. Yes, they were.</p> <p>15 Q. By whom?</p> <p>16 A. Several people. I know that we had somebody</p> <p>17 from OGC. I believe we had somebody from the U.S.</p> <p>18 Attorney's Office, an L.A. office. We had LAPD</p> <p>19 detectives that also provided some training, and I</p> <p>20 provided some of the training.</p> <p>21 Q. Okay. And who were the four contract</p> <p>22 inspectors? Do you remember?</p> <p>23 A. Yes.</p> <p>24 Q. And they're in the records if need be.</p> <p>25 A.</p>

d

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>(09:47-09:48)</p> <p>1</p> <p>2 Q. Now, besides yourself, were there any other</p> <p>3 FBI agents that participated in the program?</p> <p>4 A. Initially?</p> <p>5 Q. Later on.</p> <p>6 A. When you say "participate," in terms of</p> <p>7 conducting the actual inspections?</p> <p>8 Q. Yes.</p> <p>9 A. Later it was Steve Lawrence.</p> <p>10 Q. Okay. And I thought I saw -- and we'll show</p> <p>11 you, but I think --</p> <p>12 A. And later we did hire a fifth contractor.</p> <p>13 Q. Okay. And I thought I saw one other FBI agent</p> <p>14 on one of the inspection reports.</p> <p>15 A. Oh. e was part of the program</p> <p>16 initially.</p> <p>17 Q. What was his role in the program initially?</p> <p>18 A. The two of us were tasked with starting it up;</p> <p>19 and as I mentioned, he had other duties that he was</p> <p>20 responsible for. So he couldn't break away from his</p> <p>21 other duties. So I spent most of my time on the 2257.</p> <p>22 I think he did -- he may have gone to one, maybe two</p> <p>23 inspections.</p> <p>24 Then those positions were advertised, and I</p> <p>25 can't remember if . . . chose not to apply or what the</p>	Page 41	<p>(09:49-09:50)</p> <p>1 true that there was no search warrant associated with</p> <p>2 any of the 29 inspections, correct?</p> <p>3 A. That's true.</p> <p>4 Q. Okay. And except for a handful of what you</p> <p>5 called re-inspections, they were all based on random</p> <p>6 selection process, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And, so, they weren't based on any probable</p> <p>9 cause to believe a violation --</p> <p>10 A. No.</p> <p>11 Q. -- had occurred? Okay. They weren't even</p> <p>12 based on a reasonable suspicion that a violation of</p> <p>13 this criminal statute would be found?</p> <p>14 A. That's correct. They all were randomly</p> <p>15 selected.</p> <p>16 Q. And all but a couple of them were done without</p> <p>17 advance notice, correct?</p> <p>18 A. That's correct.</p> <p>19 MS. WYER: Objection.</p> <p>20 Q. (By Mr. Murray) Now, how many of the 29 were</p> <p>21 you present for approximately?</p> <p>22 A. I'd have to look. More than half.</p> <p>23 Q. Okay. And as to the ones that you were not</p> <p>24 present at, were you briefed on them after they</p> <p>25 occurred?</p>	Page 43
<p>(09:48-09:49)</p> <p>1 situation was, but Steve Lawrence was selected for the</p> <p>2 second position.</p> <p>3 Q. Okay. And I think you indicated that he might</p> <p>4 have come on-board about November?</p> <p>5 A. I can't remember if it was late 2007 or early</p> <p>6 2008. I think it was probably November, December of</p> <p>7 2006.</p> <p>8 Q. And the Government has provided us with</p> <p>9 reports of some 29 inspections, and I think you agreed</p> <p>10 that that sounds approximately the right number?</p> <p>11 A. Yes. Can I go back?</p> <p>12 Q. Sure.</p> <p>13 A. It wasn't . . . I think it was . . .</p> <p>14 I . . . I apologize.</p> <p>15 Q. Okay. So approximately 29 inspections were</p> <p>16 ultimately carried out under this program; is that</p> <p>17 correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And it is true that all 29 of them were done</p> <p>20 without a search warrant, correct?</p> <p>21 A. They were done as inspections and no search</p> <p>22 warrant was required. That's correct. No search</p> <p>23 warrant was used for any of those. Correct.</p> <p>24 Q. Okay. Well, my question wasn't whether one</p> <p>25 was required. I just want to make sure that it is</p>	Page 42	<p>(09:50-09:51)</p> <p>1 A. No. I would have seen a report probably, but</p> <p>2 I was not given a briefing.</p> <p>3 Q. Okay. But you reviewed the report of the ones</p> <p>4 that you didn't do?</p> <p>5 MS. WYER: Objection.</p> <p>6 A. Not necessarily.</p> <p>7 Q. (By Mr. Murray) Some of the reports you</p> <p>8 reviewed?</p> <p>9 A. I may have seen some of the others reports.</p> <p>10 That wouldn't have fallen under my purview.</p> <p>11 Q. Okay. Now, I think there was one done in a</p> <p>12 storage area. Do you remember that?</p> <p>13 A. I don't.</p> <p>14 Q. Okay. In every case, with maybe one or two</p> <p>15 exceptions, your team, Government agents entered</p> <p>16 either a private residence or a private business</p> <p>17 premises to carry out the inspection, correct?</p> <p>18 MS. WYER: Objection. "Private" is</p> <p>19 undefined.</p> <p>20 A. To me, it's a public business. They were open</p> <p>21 for business. So my interpretation would be it's a</p> <p>22 public business.</p> <p>23 Q. (By Mr. Murray) But it was owned by private</p> <p>24 citizens, correct? This wasn't governmental -- these</p> <p>25 were not governmental entities that you were</p>	Page 44

SSA Charles Joyner
April 12, 2013Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>(09:51-09:52)</p> <p>1 searching, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. So they were -- so, when I say "a 4 private business," I'm referring to the fact that they 5 were not a governmental entity, okay?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And they were owned by citizens of the 8 United States or other persons, correct, private 9 persons?</p> <p>10 A. As far as I know, I don't know if it was a 11 corporation or an individual. I don't know.</p> <p>12 Q. Okay. So, in just about every case, just so 13 that we're clear, the Government agents entered either 14 a residence or a business premises to carry out the 15 inspections, correct?</p> <p>16 A. The places we entered was the places that were 17 listed on the 2257 as the location for the records.</p> <p>18 Q. And in every case --</p> <p>19 A. If that's a business -- or I think in two 20 instances it may have been a residence.</p> <p>21 Q. Okay. My question is a little bit more direct 22 than that.</p> <p>23 A. Okay.</p> <p>24 Q. I recognize that you looked at the label as to 25 where the records were kept in order to ascertain</p>	<p>Page 45</p> <p>(09:54-09:55)</p> <p>1 MS. WYER: Objection. Lack of 2 foundation.</p> <p>3 A. I don't believe so.</p> <p>4 Q. (By Mr. Murray) Okay. In other words, that's 5 correct? When you say you don't believe so, you're --</p> <p>6 A. I don't know if they also had retail 7 merchandise that was available. I'm trying to think 8 of the different inspections we did. I do know that 9 there were other people coming and going as we did the 10 inspections. If they sold products there or not, I 11 don't know.</p> <p>12 Q. In each of the inspections, private records 13 belonging to the producer were examined, correct?</p> <p>14 MS. WYER: Objection.</p> <p>15 A. When you say "private records," these are the 16 records that are required by 2257. The only records 17 that we examined were the records, which I assume 18 makes them public, as required by 2257. Those are the 19 only records we looked at.</p> <p>20 Q. (By Mr. Murray) Yeah. But those records 21 belonged to the producers, didn't they? They were the 22 records of the producers you were --</p> <p>23 A. They were the records that the producers were 24 required to maintain by 2257.</p> <p>25 Q. Well, whose records were they?</p>
<p>(09:52-09:54)</p> <p>1 where to go, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. But in almost every case where you 4 ended up going -- the Government ended up going was 5 either a residence or a business premises to enter, 6 correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. Now, it is true that in almost every 9 case the Government agents entered areas of the 10 residence or the business premises that was not open 11 to the general public?</p> <p>12 MS. WYER: Objection.</p> <p>13 Q. (By Mr. Murray) Correct?</p> <p>14 MS. WYER: Objection. Lack of 15 foundation.</p> <p>16 A. When you say "not open to the general public," 17 could somebody from the general public walk through 18 those areas? A lot of the places we did in the 19 reception area or in a common area. There were some 20 that were done in a break room. So I'm sure the 21 public wouldn't be allowed to go back to their break 22 room.</p> <p>23 Q. (By Mr. Murray) Well, none of these were 24 retail operations where customers would come in and 25 buy merchandise, for example, correct?</p>	<p>Page 46</p> <p>(09:55)</p> <p>1 A. In essence, the records that are being 2 required by the Government.</p> <p>3 Q. I know, but whose -- who created the records?</p> <p>4 A. Their producer --</p> <p>5 Q. Okay.</p> <p>6 A. -- created the records.</p> <p>7 Q. And, therefore, they owned the records, did 8 they not?</p> <p>9 MS. WYER: Objection.</p> <p>10 A. Legally, I wouldn't know who would have 11 ownership of those records.</p> <p>12 Q. (By Mr. Murray) Well, they didn't belong to 13 you, did they?</p> <p>14 A. We're allowed to look at those and inspect 15 them.</p> <p>16 Q. Right.</p> <p>17 A. But we had no ownership. We're allowed to 18 copy them based on the statute.</p> <p>19 Q. Exactly. But they didn't belong to you, did 20 they?</p> <p>21 MS. WYER: Objection. Calls for legal 22 knowledge.</p> <p>23 A. And I say I don't know legally who would have 24 ownership, who would have property rights.</p> <p>25 Q. (By Mr. Murray) You're telling me that you</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.SSA Charles Joyner
April 12, 2013

<p>Page 49 (09:55-09:57)</p> <p>1 don't know whose records they -- whose records were 2 being examined, who owned those records? Is that your 3 testimony?</p> <p>4 A. If I have a tax record, does that tax record 5 belong to me? Does it belong to the IRS? I would say 6 the IRS has some claim to it. I don't know.</p> <p>7 Q. So, if you keep a copy of your tax return at 8 home, you don't think that that's something that 9 belongs to you, that copy?</p> <p>10 A. Yes. I have ownership of it, but also I 11 have -- the IRS also has some ownership of it also 12 because they require it.</p> <p>13 Q. But you've already submitted your tax return. 14 I'm talking about the copy that you maintain in your 15 home. You're saying that the IRS owns that copy?</p> <p>16 A. I'd have to ask a legal professor.</p> <p>17 Q. It is true, is it not, that in nearly every 18 case you entered premises that ordinarily, as an FBI 19 agent, absent exigent circumstances or voluntary 20 consent, you would need a search warrant to enter, 21 correct?</p> <p>22 A. No.</p> <p>23 Q. Do you need a search warrant to enter 24 someone's home to search for evidence?</p> <p>25 A. Not if they allow us in, they invite us in.</p>	<p>(09:58-09:59)</p> <p>1 you're searching for criminal activity or not, and 2 they say "I don't want you in my home," you can't 3 enter without a search warrant, can you?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. Regardless of what your reason for 6 being there is, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And it's also the case that in nearly every 9 situation you ordinarily, absent exigent circumstances 10 or voluntary consent, would have needed probable cause 11 to obtain a search warrant to enter areas not 12 accessible to the general public?</p> <p>13 MS. WYER: Objection. Calls for legal 14 knowledge.</p> <p>15 A. Could you rephrase that, please?</p> <p>16 Q. (By Mr. Murray) It is true that in nearly 17 every case involving these inspections you went -- to 18 the extent that you went into areas not accessible to 19 the general public, ordinarily, absent exigent 20 circumstances or voluntary consent, you would have 21 needed probable cause to obtain a search warrant to 22 enter those areas?</p> <p>23 A. I think we're almost talking apples and 24 oranges because, in the inspection process, that's not 25 required. If you're talking about suspicion of a</p>
<p>Page 50 (09:57-09:58)</p> <p>1 Q. That's what I said. Listen very carefully to 2 my question.</p> <p>3 A. Okay.</p> <p>4 Q. In nearly every case, you entered premises 5 that ordinarily, absent exigent circumstances or 6 voluntary consent, you would need a search warrant to 7 enter?</p> <p>8 MS. WYER: Objection.</p> <p>9 A. For the businesses, we wouldn't need a search 10 warrant to go into a business. Any business that's 11 open to the public we have the ability to walk in.</p> <p>12 Q. (By Mr. Murray) Okay. Would you have the 13 ability without a search warrant to go into areas not 14 accessible to the public to search through records 15 without a search warrant and without consent and 16 without exigent circumstances?</p> <p>17 MS. WYER: Objection.</p> <p>18 A. Without consent? Unless they told us that, 19 no, you're not allowed to do that, then that would be 20 correct.</p> <p>21 Q. (By Mr. Murray) You'd need a search warrant, 22 correct, in that circumstance?</p> <p>23 A. If we were searching for criminal activity, 24 yes.</p> <p>25 Q. Well, if you arrive at someone's home, whether</p>	<p>(09:59-10:01)</p> <p>1 criminal activity and we're going to look for evidence 2 of that criminal activity, yes, we would need a 3 warrant and we need probable cause to obtain that 4 warrant.</p> <p>5 Q. Okay. I understand. 2257 and the 6 implementing regulations allows you to perform these 7 inspections without a warrant and without probable 8 cause. We've already agreed with that, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. What I'm asking is: Ordinarily, if it 11 weren't for 2257 and the implementing regulations, if 12 you wanted to enter residences or business premises 13 and areas within those residences and business 14 premises not accessible to the general public, you as 15 an FBI agent would need to obtain a warrant, correct?</p> <p>16 A. I'm not sure about the characterization of 17 that, and I'm looking at it from the actual happenings 18 of these inspections.</p> <p>19 If we went to a place of business to conduct 20 the inspection and they said, "We don't want you to," 21 it's not that we're going to continue on anyway. If 22 it were a search warrant, they don't have the ability 23 to say that. Well, they can't say that. We'll 24 continue with the search.</p> <p>25 With the inspection, if they said, "We're not</p>

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>Page 53 (10:01-10:02)</p> <p>1 going to allow you in these areas," then that becomes 2 a whole other issue that we have to then place calls 3 back to DOJ.</p> <p>4 As we conduct the inspections, the places 5 we're allowed to look at are where those records are 6 stored. We don't have ability to wander around their 7 business and look at whatever we want to look at. So 8 the only places that we could look are very restricted 9 by 2257, and the places that we could look are where 10 the records are stored.</p> <p>11 Q. And what I'm saying is that, absent 2257 and 12 the implementing regulation, ordinarily, unless you 13 had exigent circumstances or voluntary consent, if you 14 wanted to enter those areas, you'd have to get a 15 search warrant?</p> <p>16 MS. WYER: Objection.</p> <p>17 Q. (By Mr. Murray) Isn't that true?</p> <p>18 MS. WYER: Objection. "Ordinarily" is 19 undefined.</p> <p>20 A. We would need either their permission or a 21 search warrant.</p> <p>22 Q. (By Mr. Murray) Okay. Thank you.</p> <p>23 Now, it is true, is it not, that in every case 24 you examined records of IDs and names, those type of 25 things, correct?</p>	<p>Page 55 (10:03-10:04)</p> <p>1 looking for criminal activity, if you showed up at the 2 door of a business premises and you said, "I'd like to 3 look at records that you have of all the performers 4 that you've used in your films," whether you were 5 looking at it for civil, criminal, or any other 6 purpose, and they said "no," ordinarily you would have 7 to go get a search warrant before you could enter the 8 premises to examine those records, correct?</p> <p>9 A. Well, as an FBI agent, I wouldn't be there 10 unless it's part of an investigation or, in this case, 11 as an inspection. So, yes. If I'm there as an FBI 12 agent in official capacity, if I want to look at -- 13 and it's not within the 2257 inspection, if it's 14 another FBI agent conducting a criminal investigation 15 and he wants to look at whatever records they may 16 have, yes, it will require a warrant.</p> <p>17 Q. Okay. Let me make sure I understand what 18 you're saying.</p> <p>19 We recognize, then, we have already agreed 20 upon the fact that 2257 and the implementing 21 regulation allows you to examine those records without 22 a warrant and without probable cause, correct?</p> <p>23 MS. WYER: Objection.</p> <p>24 A. Yes.</p> <p>25 Q. (By Mr. Murray) Okay. What I'm saying and</p>
<p>Page 54 (10:02-10:03)</p> <p>1 A. The records required under 2257.</p> <p>2 Q. And those include IDs. They include a record 3 of nicknames and aliases. And it includes dates of 4 birth and dates of production of the film, if it's a 5 film, those type of records, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And oftentimes they were stored in file 8 cabinets, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Sometimes they were on computers?</p> <p>11 A. I believe so.</p> <p>12 Q. But in every case you examined those type of 13 records if they were available, correct?</p> <p>14 A. The 2257 records? Correct.</p> <p>15 Q. And it is true that ordinarily, if it weren't 16 for 2257 and its implementing regulation, absent 17 exigent circumstances or voluntary consent, you would 18 need a search warrant to search through records like 19 that; isn't that true?</p> <p>20 MS. WYER: Objection.</p> <p>21 A. If I were an FBI agent conducting a criminal 22 investigation, I would need a search warrant to look 23 for those records if they were evidence of that 24 criminal activity.</p> <p>25 Q. (By Mr. Murray) Well, even if you weren't</p>	<p>Page 56 (10:04-10:06)</p> <p>1 asking you: Whether you agree or not, if it weren't 2 for 2257 and the implementing regulation that 3 authorized you to do that without a warrant, you would 4 have to have a warrant to do it, correct?</p> <p>5 MS. WYER: Objection.</p> <p>6 A. The part of the question that's confusing to 7 me, as I'm looking at it in an official capacity as an 8 FBI agent, the only reason I would want to look at 9 information is as evidence of criminal activity. In 10 order to do that, I would need a warrant.</p> <p>11 Q. (By Mr. Murray) Okay. And probable cause, 12 too, in that scenario?</p> <p>13 A. You can get the warrant without probable 14 cause.</p> <p>15 Q. All right. So, if I understand the program 16 that you developed, you tried to develop a program 17 that would be efficient, correct, and useful?</p> <p>18 A. We tried to develop a program that was well 19 within the law and that fulfilled the mission.</p> <p>20 Q. And you randomly selected the producers whose 21 establishments you would enter to inspect, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. By some computer program that just spit out at 24 random the names of producers that you knew about were 25 in -- were dealing in sexually explicit materials,</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>Page 57 (10:06-10:07)</p> <p>1 correct?</p> <p>2 A. We used a random number generator.</p> <p>3 Q. Okay. And from that point, your contract</p> <p>4 agents would attempt to obtain a sample of the</p> <p>5 sexually explicit images that that producer had</p> <p>6 created?</p> <p>7 A. No, sir.</p> <p>8 Q. Didn't they try to order merchandise?</p> <p>9 A. No. That would be my job.</p> <p>10 Q. Oh, okay. So you were the one that obtained a</p> <p>11 sample of the sexually explicit materials that were at</p> <p>12 issue?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. But your contract employees then</p> <p>15 examined the images to determine whether they came</p> <p>16 within 2257 and other information?</p> <p>17 A. Correct.</p> <p>18 Q. And they identified performers and titles, for</p> <p>19 example, the records of which you wanted to inspect?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And then you would go out to do the</p> <p>22 inspections, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And how many people would be on the inspection</p> <p>25 team generally speaking?</p>	<p>(10:08-10:10)</p> <p>1 A. That's correct.</p> <p>2 Q. And then various reports would be completed</p> <p>3 with respect to each inspection, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Then let's take a look at some of these</p> <p>6 reports.</p> <p>7 A. Do you want me to continue to hold onto these?</p> <p>8 Q. Yeah. You can just set them right there.</p> <p>9 A. Okay.</p> <p>10 Q. Keep them right in front of you.</p> <p>11 I want to show you what's been marked as</p> <p>12 Plaintiff's Exhibit 1.</p> <p>13 MS. WYER: Could you identify which</p> <p>14 report you're looking at?</p> <p>15 MR. MURRAY: I'm about to. Yes.</p> <p>16 Q. (By Mr. Murray) This, Agent, is it not, the</p> <p>17 report of an inspection of something called</p> <p>18 A. Yes, sir.</p> <p>19 Q. _____, I guess, is the name; is that</p> <p>20 correct?</p> <p>21 A. That's what's listed on here. Correct.</p> <p>22 MS. WYER: Could you wait until we find</p> <p>23 the report?</p> <p>24 MR. MURRAY: Sure. So you do have them?</p> <p>25 MS. WYER: He told you earlier that he</p>
<p>Page 58 (10:07-10:08)</p> <p>1 A. It would typically -- for the ones that I</p> <p>2 conducted, it would be me and the four contractors.</p> <p>3 Q. So there was a team of five?</p> <p>4 A. Yes. And then later, once we hired the fifth</p> <p>5 contractor, there could be six.</p> <p>6 Q. Okay. And when Agent Lawrence did an</p> <p>7 inspection, was that generally what he would do as</p> <p>8 well?</p> <p>9 A. Yes. And I think originally, when he first</p> <p>10 was coming on, he would go, too, so he could learn the</p> <p>11 process. And I can't remember if _____, had been</p> <p>12 hired at that point or not. So there may have been</p> <p>13 seven. So, five, six, seven typically was the number</p> <p>14 that we would take.</p> <p>15 Q. So Agent Lawrence would go with you for the</p> <p>16 first few once he came on-board?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And then he would do some on his own --</p> <p>19 I mean, without you?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. But he would have the similar team of</p> <p>22 contract agents, correct?</p> <p>23 A. He had the same members.</p> <p>24 Q. So each inspection would involve anywhere from</p> <p>25 five to seven Government personnel, correct?</p>	<p>Page 60 (10:10-10:11)</p> <p>1 had them.</p> <p>2 MR. MURRAY: Well, I didn't hear that.</p> <p>3 Well, then why were you complaining that I didn't</p> <p>4 bring an extra copy?</p> <p>5 MS. WYER: I did not bring them.</p> <p>6 MR. SAMONDS: And, also, we didn't have</p> <p>7 copies of all the other documents which you've been</p> <p>8 going through and sorting through.</p> <p>9 MR. MURRAY: But I provided you with</p> <p>10 copies with the one exception that you were able to</p> <p>11 make a copy of, that letter.</p> <p>12 MR. SAMONDS: There are some which she</p> <p>13 specifically asked for a copy for, and we had no idea</p> <p>14 how many more documents there would be that you</p> <p>15 wouldn't have copies of.</p> <p>16 MR. MURRAY: Well, you know, you've got</p> <p>17 the reports?</p> <p>18 MR. SAMONDS: I think I have all of them.</p> <p>19 I would just like to see.</p> <p>20 MR. MURRAY: I thought you didn't want to</p> <p>21 to have to carry -- you told me when we were coming in</p> <p>22 the last thing you wanted was to have to go home with</p> <p>23 6,000 pages of the records that you provided us.</p> <p>24 MS. WYER: Well, I don't want to carry it</p> <p>25 all, but I did not know and I was not informed that</p>

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>Page 61 (10:11)</p> <p>1 you were going to enter all of these as exhibits at 2 this deposition.</p> <p>3 MR. MURRAY: Well, I wasn't required to 4 inform you of that. I know of no rule that requires 5 me to tell you what I'm going to ask in a deposition.</p> <p>6 MS. WYER: That's fine.</p> <p>7 MR. MURRAY: I know of no rule that 8 required me to make 6,000 pages of documents and lug 9 them from Cleveland to Houston so that you could have 10 a set of copies of the 29 reports that you sent me.</p> <p>11 MS. WYER: I believe it's customary at a 12 deposition for the counsel to provide opposing counsel 13 with a copy of any exhibits.</p> <p>14 MR. MURRAY: Not when there are 6,000 15 pages that you provided me and that you have.</p> <p>16 MS. WYER: I have not experienced that exception.</p> <p>18 MR. MURRAY: Okay. Well, I know of no rule that required me to do that, but you can look on with the agent. He's got the document right with you.</p> <p>21 MS. WYER: He's attempting to find that document.</p> <p>23 MR. MURRAY: I'm talking about the witness.</p> <p>25 MR. SAMONDS: I don't appear to have The</p>	<p>(10:12-10:19)</p> <p>1 vast majority of them.</p> <p>2 MR. MURRAY: Why don't we take a short 3 break?</p> <p>4 (Brief recess)</p> <p>5 Q. (By Mr. Murray) All right. Agent Joyner, 6 Plaintiff's Exhibit 1 is in front of you; is that 7 correct, sir?</p> <p>8 A. That's correct.</p> <p>9 Q. And Plaintiff's Exhibit 1 is a set of records 10 pertaining to one of the search -- one of the 11 inspections that was carried out under 2257; isn't 12 that correct?</p> <p>13 A. This is one of the inspections. Correct.</p> <p>14 Q. And are you familiar with this packet of -- 15 this type of package of documents?</p> <p>16 A. Yes, I am.</p> <p>17 Q. And so that --</p> <p>18 MS. WYER: Take a minute. Have you had a 19 chance to look at it?</p> <p>20 A. Yes.</p> <p>21 Q. (By Mr. Murray) Okay. And is this the type 22 of record that your program called for creating in 23 connection with an inspection?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And if you turn to -- well, let me ask</p>
<p>Page 62 (10:12)</p> <p>1 Agency. I think I have almost all of the others. I'm 2 not sure why that one would not be here. It wasn't in 3 the supplement, was it? I'm not sure why I don't have 4 that one.</p> <p>5 Q. (By Mr. Murray) All right. Agent Joyner, you 6 have in front of you Plaintiff's Exhibit 1, do you 7 not?</p> <p>8 MS. WYER: For the record, let the record 9 reflect that counsel for the witness has not been 10 provided a copy of this exhibit.</p> <p>11 MR. MURRAY: And let the record show that 12 you're welcome to examine the -- here. Let me have 13 that.</p> <p>14 MR. SAMONDS: Would you let me go make a 15 copy?</p> <p>16 MR. MURRAY: Let me have that exhibit 17 back.</p> <p>18 Ms. Wyer, here is Plaintiff's Exhibit 1. 19 Please take a look at it before I show it to the 20 witness.</p> <p>21 MR. SAMONDS: Would you like me to go 22 make a copy of it?</p> <p>23 MR. MURRAY: That's up to you. I don't 24 care. You're going to have to do it for 6,000 pages.</p> <p>25 MR. SAMONDS: No. I think I have the</p>	<p>(10:19-10:20)</p> <p>1 you this: Does that include this cover page or was 2 that something that's added for purposes of the case?</p> <p>3 A. That was something that was added.</p> <p>4 Q. Okay. As was page 2 was added, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And there's nothing on page 3. It's blank.</p> <p>7 Where does the record begin that consists of the 8 record that was created in connection with this 9 inspection?</p> <p>10 A. Page 4.</p> <p>11 Q. Okay. And then does it go all the way to page 12 84?</p> <p>13 A. That's correct.</p> <p>14 Q. So, from pages 4 through 84, that constitutes 15 the record pertaining to the inspection that occurred 16 with respect to this particular establishment, 17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And it consists of a number of items. There's 20 a Table of Contents, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the Table of Contents then identifies 23 various tabs, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And was this the type of template that you</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>(10:20-10:21)</p> <p>1 created?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. And it was followed in every case?</p> <p>4 A. I believe this same format was used for all</p> <p>5 the inspections.</p> <p>6 Q. Very good. Now, if you turn to page 7 of</p> <p>7 Plaintiff's Exhibit 1, there is a document entitled</p> <p>8 Regulatory Inspections Report, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And this is a report of Supervisory Special</p> <p>11 Agent Charles R. Joyner, which is yourself, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And the date of the report is August 24, 2007;</p> <p>14 is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And this is the report that you created in</p> <p>17 connection with the inspection of The Agency, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And that inspection occurred on August 20,</p> <p>20 2007, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Now, you indicate in the summary the DVDs had</p> <p>23 been ordered from the internet, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then the contract inspectors reviewed them</p>	Page 65	<p>(10:22-10:23)</p> <p>1 they couldn't also tell us who the true name was or</p> <p>2 the aliases. So there was not an adequate</p> <p>3 cross-reference system in place.</p> <p>4 Q. What do you mean by a Y-Tracker program?</p> <p>5 A. That was the name they gave us of the system</p> <p>6 that they installed that they had purchased.</p> <p>7 Q. I see. And under the regs, there has to be</p> <p>8 the ability to retrieve not only the true name but the</p> <p>9 alias or nickname or stage name, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And, so, that's why you cited that regulation</p> <p>12 75.3 as being the regulation that would be violated by</p> <p>13 their failure to be able to cross-reference the true</p> <p>14 name and the stage name; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. It doesn't mean they didn't have a record of</p> <p>17 the performer. It just means you couldn't</p> <p>18 cross-reference it, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And even if they have the name of the</p> <p>21 performer and they have the ID, if you can't</p> <p>22 cross-reference it, you violated the law, didn't you?</p> <p>23 MS. WYER: Objection.</p> <p>24 A. That is a requirement of 2257. You have to</p> <p>25 have the ability to cross-reference.</p>	Page 67
<p>(10:21-10:22)</p> <p>1 and identified the various performers that you would</p> <p>2 be interested in, correct?</p> <p>3 MS. WYER: Objection.</p> <p>4 A. They identified all the performers that were</p> <p>5 engaged in a sexually explicit act.</p> <p>6 Q. (By Mr. Murray) Right. And you wanted --</p> <p>7 ultimately, your mission was to inspect records</p> <p>8 pertaining to those performers, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Now, you indicate that there was one 2257</p> <p>11 violation that was found after the inspection,</p> <p>12 correct, if you go back to page 7?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. And then on page 8 you have a finding;</p> <p>15 is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And you write, "A 'Y-Tracker' program was</p> <p>18 installed as the cross-reference system, but the stage</p> <p>19 names could not be determined from the true names of</p> <p>20 the performers"; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. What do you mean by that?</p> <p>23 A. The system that they had installed, they</p> <p>24 couldn't pull up -- we'd have a stage name of this</p> <p>25 performer, performer A, and with that performer A,</p>	Page 66	<p>(10:23-10:24)</p> <p>1 Q. (By Mr. Murray) And it's a criminal offense</p> <p>2 if you don't, isn't it?</p> <p>3 MS. WYER: Objection.</p> <p>4 A. It's a violation of 2257. Correct.</p> <p>5 Q. (By Mr. Murray) Which is a criminal offense,</p> <p>6 correct?</p> <p>7 MS. WYER: Objection.</p> <p>8 A. That's correct.</p> <p>9 Q. (By Mr. Murray) Okay. Then if you look at</p> <p>10 page 9, you have a section entitled "Pre-inspection</p> <p>11 Procedures"; is that correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And you outline the four steps that were taken</p> <p>14 before the inspection was carried out, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Again, there's a random selection of this</p> <p>17 particular producer, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. A sample of the producer's DVDs was ordered,</p> <p>20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. The DVDs were reviewed for 18 USC 2257</p> <p>23 compliance, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And your contractors then fill out a</p>	Page 68

SSA Charles Joyner
April 12, 2013Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>(10:24-10:25)</p> <p>1 pre-inspection analysis for each DVD; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And then all the performers were identified by</p> <p>4 either a stage name or by still photographs of their</p> <p>5 likeness taken from the video, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. So you then go out to the premises on</p> <p>8 August -- I think we said 17th, two thousand and --</p> <p>9 A. August 20th.</p> <p>10 Q. -- August 20th in 2007 and you arrived there</p> <p>11 at about 9:30 a.m. in the morning, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And you were the lead inspector. So, you</p> <p>14 identified yourself and the purpose of the inspection</p> <p>15 upon entering the premises, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And you explained the nature and purpose of</p> <p>18 the inspection, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And then you provided [REDACTED] who was</p> <p>21 the person that you encountered at this inspection,</p> <p>22 with a letter explaining the parameters of the</p> <p>23 inspection and advising [REDACTED] could be</p> <p>24 reinspected at any time if violations were discovered,</p> <p>25 correct?</p>	<p>Page 69</p> <p>(10:26-10:27)</p> <p>1 Q. Do you have any idea why the -- have you</p> <p>2 looked at some of these records in preparation for</p> <p>3 your deposition?</p> <p>4 A. I have not.</p> <p>5 Q. Do you know where the originals of these --</p> <p>6 obviously, you don't know where they would be at this</p> <p>7 juncture, do you?</p> <p>8 A. No, sir.</p> <p>9 Q. Okay. What was the quality of the photos at</p> <p>10 the time they were taken?</p> <p>11 A. Typical digital photos.</p> <p>12 MR. MURRAY: Have you produced those or</p> <p>13 just copies?</p> <p>14 MR. SAMONDS: Just the copies have been</p> <p>15 produced.</p> <p>16 MR. MURRAY: Because most of them are</p> <p>17 very, very poor. Are the originals available to see?</p> <p>18 MS. WYER: We produced a second set of</p> <p>19 the photos, I believe.</p> <p>20 MR. MURRAY: Well, the --</p> <p>21 MR. SAMONDS: They're some of the photos.</p> <p>22 MR. MURRAY: Go ahead.</p> <p>23 MR. SAMONDS: I believe copies of all of</p> <p>24 the photos have been produced. To the extent you need</p> <p>25 better copies, we can work on trying to get you better</p>	<p>Page 71</p>
<p>(10:25-10:26)</p> <p>1 A. Yes, sir.</p> <p>2 Q. And that's similar to the letter that you</p> <p>3 previously identified as Plaintiff's Exhibit 32?</p> <p>4 A. Plaintiff's Exhibit 34.</p> <p>5 Q. 34?</p> <p>6 A. Yes, sir.</p> <p>7 Q. It was that type of letter you're referring</p> <p>8 to?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. Do you know why you weren't able to</p> <p>11 retrieve or do you know where all these other letters</p> <p>12 are? We've gotten four or five of them. Do you know</p> <p>13 where the others would be?</p> <p>14 A. I don't know.</p> <p>15 Q. Okay. Now, before you began the inspection,</p> <p>16 you had photographs taken of the business location of</p> <p>17 where the records were stored, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And you had photographs taken of the working</p> <p>20 area assigned to the inspectors, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And then a disc containing the six photographs</p> <p>23 was placed in an envelope and maintained with the case</p> <p>24 file; is that correct?</p> <p>25 A. That's correct.</p>	<p>Page 70</p> <p>(10:27-10:28)</p> <p>1 copies.</p> <p>2 MR. MURRAY: Well, are there originals</p> <p>3 some place that would be the best?</p> <p>4 MR. SAMONDS: Within the case file, yes.</p> <p>5 MR. MURRAY: Okay. Because I think</p> <p>6 ultimately we need those because most of these -- and</p> <p>7 you've tried your best because we did get some</p> <p>8 supplemental pictures and they really weren't much</p> <p>9 better.</p> <p>10 MR. SAMONDS: We can certainly work on</p> <p>11 getting you better copies if those are necessary.</p> <p>12 MR. MURRAY: That would be great or</p> <p>13 access to the originals or maybe we'll just have to</p> <p>14 have the originals --</p> <p>15 MS. WYER: We can discuss this.</p> <p>16 MR. MURRAY: -- brought to court.</p> <p>17 Q. (By Mr. Murray) Okay. So you took</p> <p>18 photographs before. Then you inspected the records</p> <p>19 maintained by [REDACTED] correct?</p> <p>20 A. For those six videos that were selected, yes,</p> <p>21 sir.</p> <p>22 Q. Okay. And that took about -- the inspection</p> <p>23 took about three hours because you say it concluded at</p> <p>24 approximately 12:30?</p> <p>25 A. Yes, sir.</p>	<p>Page 72</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>Page 73 (10:28-10:30)</p> <p>1 Q. And then you say that a photograph was taken 2 of the room where you did the inspection, correct? 3 A. That's correct. 4 Q. You then have something called Records 5 Verification Spreadsheet, correct? 6 A. Yes, sir. 7 Q. Okay. You then have the 302s that the 8 contract inspectors created, correct? 9 A. That's correct. 10 Q. And your name is on some of them as well. And 11 those have to do with reviewing the DVDs, correct? 12 A. Yes, sir. 13 Q. You then have the photographs if you look at 14 page 27. Well, I'm sorry go to page 25. You have a 15 photo log first of all, correct? 16 A. Yes, sir. 17 Q. In which your photographer who in this case 18 was who? Does it indicate who took these photos? 19 A. [.....] 20 Q. Okay. And there's a total of six and they're 21 described, correct? 22 A. That's correct. 23 Q. And then if you look at page 28, you can see 24 that that is the front door of the building that you 25 entered; is that correct?</p>	<p>(10:31-10:32)</p> <p>1 A. That's showing the location where they have 2 the records stored. 3 Q. And are the records inside those file 4 cabinets? 5 A. Yes, sir. 6 Q. Well, did you examine any of the records that 7 were inside those file cabinets? 8 A. Of the six that were selected for the 9 inspection, yes, sir. 10 Q. Okay. And they had to be removed from those 11 file cabinets to look at them? 12 A. They did. 13 Q. Now, correct me if I'm wrong, but isn't it 14 true, Agent Joyner, that ordinarily if an FBI agent 15 wants to peruse a file cabinet like this and look at 16 the records that are contained inside that are located 17 on a premises of a business, absent exigent 18 circumstances and voluntary consent or voluntary 19 consent, an FBI agent would ordinarily need a search 20 warrant, correct? 21 A. For each of these inspections, we gave the 22 owner or the custodian of records the option. They 23 could either have us pull the records or they could 24 pull them and bring them to us. So it was up to them. 25 We asked them what they preferred.</p>
<p>Page 74 (10:30-10:31)</p> <p>1 A. Yes, sir. 2 Q. And if you look at page 29, you can see that 3 there's a picture of various file cabinets, correct? 4 A. Yes, sir. 5 Q. And the drawers to those file cabinets are 6 open; isn't that correct? 7 A. That's correct. 8 Q. And whose file cabinets were those? 9 A. That was the -- 10 MS. WYER: Objection. 11 A. That was the location that The Agency stored 12 their 2257 records. 13 Q. (By Mr. Murray) But those file cabinets 14 belonged to the proprietor, not to the Government, 15 correct? 16 A. That's correct. 17 Q. And did you search through the records 18 contained in the -- in those file cabinets as depicted 19 on this photograph? 20 A. No, sir. 21 Q. Did you inspect any of those records? 22 A. We inspected the records that were on the list 23 of the six DVDs. 24 Q. Well, then what are these -- what is this 25 picture of?</p>	<p>Page 76 (10:32-10:33)</p> <p>1 Q. That's not my question. My question is 2 different. 3 It is true, is it not, that ordinarily, in the 4 absence of exigent circumstances or voluntary consent, 5 an FBI agent who wants to peruse through the records 6 contained in a file cabinet like this located on a 7 business premises would need a search warrant? 8 MS. WYER: Objection, form. 9 A. Ordinarily during a 2256 inspection, the 10 answer would be no. 11 Q. (By Mr. Murray) Okay. Absent 2257 -- 12 A. Uh-huh. 13 Q. -- and the implementing regulations which 14 permit you to do it without a warrant, without 15 probable cause, without advance notice, if 2257 and 16 its implementing regulations didn't authorize what you 17 did here, ordinarily an FBI agent would need a search 18 warrant to look through this file cabinet on this 19 business premises and the records contained in there; 20 isn't that true? 21 MS. WYER: Objection. 22 A. If an agent absent 2257 inspections? 23 Q. (By Mr. Murray) Yes. 24 A. If an agent were at that premise to conduct a 25 criminal investigation to look at the records, he</p>

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p>Page 77 (10:33-10:34)</p> <p>1 would need a warrant, which is completely separate 2 than a 2257 inspection.</p> <p>3 Q. I understand that.</p> <p>4 A. Okay. Yes.</p> <p>5 Q. But that's my point.</p> <p>6 A. Yes.</p> <p>7 Q. I'm trying to divorce it from the 2257 8 inspection because we can agree you don't need a 9 warrant under this statute, you don't need probable 10 cause, and you don't have to give them advance 11 warning. We've already agreed on that three times, 12 haven't we?</p> <p>13 A. For any criminal investigation to look at the 14 records without consent or exigent circumstances, yes, 15 you would require a warrant.</p> <p>16 Q. Well, actually, for any investigation, if you 17 just showed up and for whatever official reason you 18 might have, if they wouldn't consent to you perusing 19 through that file cabinet, you would need a search 20 warrant, correct?</p> <p>21 A. Well, the FBI wouldn't be there unless it was 22 a criminal investigation other than 2257 inspections.</p> <p>23 Q. Okay. I think we're saying the same things.</p> <p>24 You would need a search warrant if you were there in 25 an official capacity wanting to look through those</p>	<p>(10:35-10:36)</p> <p>1 inspection.</p> <p>2 Q. Okay.</p> <p>3 A. We always asked them where they would like us 4 to do the paperwork, and that's the area that they 5 selected.</p> <p>6 Q. Okay. And when you entered this building -- 7 do you remember this particular inspection?</p> <p>8 A. No.</p> <p>9 Q. Okay. So you can't really describe what you 10 saw when you entered?</p> <p>11 A. No.</p> <p>12 Q. Okay. Anyway, this picture depicts the area 13 that you did enter for purposes of examining records, 14 correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And there were a total of five or six of you 17 in this area examining these records, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And the next page shows essentially the same 20 office area, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And, again, if it weren't for 2257 and its 23 implementing regulations, if an FBI agent had an 24 official reason to be at that premises wanting to 25 enter that area of those premises without consent by</p>
<p>Page 78 (10:34-10:35)</p> <p>1 records if you didn't have the authority of 2257.</p> <p>2 MS. WYER: Objection.</p> <p>3 Q. (By Mr. Murray) Do we agree on that?</p> <p>4 MS. WYER: Objection.</p> <p>5 A. Yes, sir.</p> <p>6 Q. (By Mr. Murray) Okay. Now, the next page 7 shows an office type area, correct, or some -- tell me 8 what that shows, what that picture depicts.</p> <p>9 A. I don't know. The quality is poor. It looks 10 like a work area.</p> <p>11 Q. Right. It looks like a work area. There's a 12 chair in the middle, isn't there?</p> <p>13 A. Yes, sir.</p> <p>14 Q. There's a desk; isn't that true?</p> <p>15 A. That looks like a desk.</p> <p>16 Q. There's papers on that desk?</p> <p>17 A. Yes, sir.</p> <p>18 Q. There's a file cabinet to the right, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. There looks like a printer or some kind of 21 maybe a fax machine on the left of that desk; is that 22 correct?</p> <p>23 A. That's what it looks like.</p> <p>24 Q. And that was an area that you entered?</p> <p>25 A. That was an area where they gave us to do the</p>	<p>Page 80 (10:36-10:37)</p> <p>1 the owner, voluntary consent or exigent circumstances, 2 the FBI agent would need a search warrant, correct?</p> <p>3 MS. WYER: Objection.</p> <p>4 A. Absent the 2257 inspection, that's correct.</p> <p>5 Q. (By Mr. Murray) Now, there is a 2257 6 checklist that is the next tab; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And it begins with what's known as a Review 9 Form, a Pre-inspection Product Review, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And this particular inspector was 12 whom you've identified before, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And there's a title of the DVD, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And then there's some premarked questions that 17 she's supposed to check, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And, for example, the very first one is -- you 20 say the "product is a" and it could be a book, a 21 magazine, it could be a periodical, for example, 22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. It could be a film, correct?</p> <p>25 A. That's correct.</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>Page 81 (10:38-10:39)</p> <p>1 Q. Could be a videotape, correct? 2 A. Correct. 3 Q. Could be a digitally or computer-manipulated 4 image? 5 A. Correct. 6 Q. Could be a digital image? 7 A. Correct. 8 Q. Could be just a picture, correct? 9 A. Correct. 10 Q. Or it could be an internet computer site or 11 service, correct? 12 A. That's correct. 13 Q. Or it could be any other matter, correct? 14 A. That's correct. 15 Q. And that's because all of those various types 16 of items, if they portray a sexually explicit image, 17 are subject to 2257, correct? 18 A. That's correct. 19 MS. WYER: Objection. 20 Q. (By Mr. Murray) Now, then there's a place on 21 this report for a post -- an on-site inspection 22 review, correct? 23 A. What page is that? 24 Q. If you go to page 37. Is that correct? 25 A. That's correct.</p>	<p>Page 83 (10:40-10:42)</p> <p>1 A. Correct. 2 Q. And you indicated that they were determined to 3 be out of compliance, but they were able to resolve 4 the one violation, correct? 5 A. That's correct. 6 Q. They came up with a system to match the true 7 name to the stage name? 8 A. Yes, sir. 9 Q. Okay. So that took about three hours, I think 10 we indicated; is that correct? 11 A. 9:30 to 12:30. Correct. 12 Q. Let me show you what's been marked Plaintiff's 13 Exhibit 2 which is L_____ Serial 12. 14 You didn't find any underage performers in 15 that first inspection that we went through, did you? 16 A. That's correct. 17 Q. And by "underage," that would be someone 18 younger than 18, correct? 19 A. That's correct. 20 Q. All right. Do you have Plaintiff's Exhibit 2 21 in front of you, Agent Joyner? 22 A. Yes, I do. 23 Q. And just so that we're clear, with respect to 24 Plaintiff's Exhibit 1 and I think you'll probably 25 agree that with respect to all of these reports, they</p>
<p>Page 82 (10:39-10:40)</p> <p>1 Q. And is that completed on the premises or after 2 you leave? 3 A. That's on premises. 4 Q. Okay. So, while the contract agents and 5 you -- well, describe how it works. If you've got 6 five or six people there, what are your -- you know, 7 who is doing what so that you don't fall over each 8 other looking at these records? 9 A. They each reviewed a DVD. So, in this case, 10 she reviewed this one particular DVD. So 11 she's responsible for that DVD. She would have the 12 records for that DVD, the 2257 records, and she 13 would -- each one would have their own assignment 14 based on what they reviewed. 15 Q. Okay. What would your assignment be? Just to 16 supervise it? 17 A. Yes, and then to write up the final report. 18 Q. Okay. All right. So those -- I won't go over 19 all of those. But each DVD would have that same 20 pre-inspection and on-site inspection checklist, 21 correct? 22 A. Yes, sir. 23 Q. And then the last page, page 84, would 24 indicate whether the producer was compliant or not, 25 correct?</p>	<p>Page 84 (10:42-10:43)</p> <p>1 were created at or near the time when the events 2 occurred, correct? 3 A. Yes, sir. 4 Q. By persons with knowledge of the events that 5 they recorded in them, correct? 6 A. Yes, sir. 7 Q. And they were kept in the ordinary course of 8 business and maintained in the ordinary course of 9 business by the Federal Bureau of Investigation? 10 A. That's correct. 11 Q. All right. So this was an inspection of 12 L_____ also known as Filmco 13 Productions, correct? 14 A. Yes, sir. 15 Q. And this one -- if you go to page 92, this one 16 was done by Supervisory Special Agent Lawrence, 17 correct? 18 A. That's correct. 19 Q. And by the time he got on-board, he was given 20 full information about the program that you had set 21 up? 22 A. Yes, sir. 23 Q. Correct? 24 A. Yes, sir. 25 Q. And he was given any training that he needed</p>

SSA Charles Joyner
April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p style="text-align: right;">Page 85</p> <p>(10:43-10:44)</p> <p>1 to carry out his duties, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And, in fact, all of the inspections were --</p> <p>4 regardless by whom they were done, were to follow a</p> <p>5 certain protocol, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. All right. So, on this occasion, this one was</p> <p>8 done by Special Agent Lawrence, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. July 23, '07, correct, is the date of the</p> <p>11 report?</p> <p>12 A. That's correct.</p> <p>13 Q. And the date of the inspection was June 19,</p> <p>14 2007; is that correct?</p> <p>15 A. June 19th. Correct.</p> <p>16 Q. Do you know whether you went with him on this</p> <p>17 one?</p> <p>18 A. It doesn't look familiar.</p> <p>19 Q. Okay.</p> <p>20 A. The name doesn't ring a bell to me. So I</p> <p>21 don't think so.</p> <p>22 Q. Okay. This would indicate that he was</p> <p>23 on-board as early as June of '07. Well, actually, I</p> <p>24 think you said November of '06 he was already</p> <p>25 on-board, correct?</p>	<p style="text-align: right;">Page 87</p> <p>(10:46-10:47)</p> <p>1 Q. All right. Now, if you go to page 98 -- are</p> <p>2 you there?</p> <p>3 A. Not yet.</p> <p>4 Q. Okay.</p> <p>5 A. Okay.</p> <p>6 Q. Again, this same format that we saw in</p> <p>7 Plaintiff's Exhibit 1 is followed in this exhibit as</p> <p>8 well, correct?</p> <p>9 A. It looks like the same format. Yes.</p> <p>10 Q. You've got the pre-inspection procedures,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then you've got the inspection procedures,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. In this case, the inspection began at about</p> <p>17 11:00 a.m., correct?</p> <p>18 A. That's what it states. Yes.</p> <p>19 Q. And if you look at paragraph 4, it appears</p> <p>20 that Agent Lawrence provided _____ with the same</p> <p>21 type of letter that we saw in Plaintiff's Exhibit 34,</p> <p>22 correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And, again, before the inspection began, they</p> <p>25 took digital photographs of the business location, the</p>
<p style="text-align: right;">Page 86</p> <p>(10:44-10:46)</p> <p>1 A. I think it was November, December '06. I'm</p> <p>2 not certain when.</p> <p>3 Q. Okay. In any case, that inspection occurred</p> <p>4 on June 19, '07, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And _____ was the owner and the</p> <p>7 custodian of records who was present throughout the</p> <p>8 inspection, correct?</p> <p>9 MS. WYER: Objection.</p> <p>10 Q. (By Mr. Murray) According to this report.</p> <p>11 A. According to this report, yes.</p> <p>12 Q. And according to Agent Lawrence, after the one</p> <p>13 inspection -- after the inspection, it was determined</p> <p>14 that Bacchus had one violation. Another violation was</p> <p>15 fixed prior to the completion of the inspection,</p> <p>16 correct?</p> <p>17 A. That's what it states.</p> <p>18 Q. Okay. Now, the other thing is that some of</p> <p>19 these records show that the producer gives a response</p> <p>20 to the findings, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And whatever the producer said in response to</p> <p>23 any violation findings is also recorded in these</p> <p>24 documents, correct?</p> <p>25 A. It is in this one. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>(10:47-10:48)</p> <p>1 records storage, and the working area where they</p> <p>2 carried out the inspection, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And in paragraph 7, in this case, they</p> <p>5 actually made copies of the identifications of</p> <p>6 selected performers, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. So you would go out to the premises sometimes</p> <p>9 with an actual copying machine of some kind, a</p> <p>10 portable copying machine?</p> <p>11 A. Yes. We always went with a copy machine.</p> <p>12 Q. And, so, in many cases, you would actually</p> <p>13 copy some of these records and take them with you,</p> <p>14 correct?</p> <p>15 MS. WYER: Objection.</p> <p>16 A. It has been six, seven years. If I recall, we</p> <p>17 copied all of the 2257 records --</p> <p>18 Q. (By Mr. Murray) Okay. All right.</p> <p>19 A. -- for those items that were selected.</p> <p>20 Q. All right. So you come out to the premises</p> <p>21 with a portable machine. You'd examine the records</p> <p>22 and then you would make copies of them and you would</p> <p>23 take the copies of those records with you?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Again, all without a warrant? You never got a</p>

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

SSA Charles Joyner
April 12, 2013

<p>Page 89 (10:48-10:50)</p> <p>1 warrant to remove copies from the premises, did you?</p> <p>2 MS. WYER: Objection.</p> <p>3 A. None was required.</p> <p>4 Q. (By Mr. Murray) Did you get one?</p> <p>5 A. A warrant? No.</p> <p>6 Q. Okay. And then this inspection lasted, it</p> <p>7 looks like, about 2 hours and 45 minutes, is that</p> <p>8 correct, if you go to page 99?</p> <p>9 A. Yeah. It ended at 1:45 p.m.</p> <p>10 Q. Okay. Now, if you would take a look at page</p> <p>11 115, it would appear that on that occasion Agent</p> <p>12 Lawrence actually did an interview of this</p> <p>13 , correct?</p> <p>14 A. Yes.</p> <p>15 Q. Now, if you look at page 120 --</p> <p>16 A. Okay.</p> <p>17 Q. -- there's a picture of the front door of the</p> <p>18 premises; is that correct?</p> <p>19 A. It's a door. I wasn't there, but it looks</p> <p>20 like a door to some building with a listing of</p> <p>21 companies that are in that building. It appears to be</p> <p>22 a front door. You can see out into the parking lot.</p> <p>23 Q. Right. Okay. Then look at the next page.</p> <p>24 A. Okay.</p> <p>25 Q. That's a photograph of several file cabinets,</p>	<p>(10:51-10:52)</p> <p>1 regulations, and if an FBI wanted to enter these</p> <p>2 premises to examine the records contained in those</p> <p>3 file cabinets, without exigent circumstances or</p> <p>4 voluntary consent, the FBI agent would need to get a</p> <p>5 search warrant, correct?</p> <p>6 MS. WYER: Objection.</p> <p>7 A. That's the same question as before. And the</p> <p>8 answer is yes. If it was absent the 2257 inspection,</p> <p>9 as part of a criminal investigation, yes, you would</p> <p>10 need a warrant.</p> <p>11 Q. (By Mr. Murray) Okay. Now go to the next</p> <p>12 page.</p> <p>13 A. Okay.</p> <p>14 Q. That's a picture of somebody's desk, correct?</p> <p>15 A. Yes.</p> <p>16 Q. With a computer, correct?</p> <p>17 A. Yes.</p> <p>18 Q. There's some headphones on the wall, correct?</p> <p>19 A. Yes.</p> <p>20 Q. There's a calendar for 2007, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. There's paper on the desk, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. There's a paper. It looks like it's on the</p> <p>25 wall there or --</p>
<p>Page 90 (10:50-10:51)</p> <p>1 correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Two of them opened; is that correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. With records inside, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And according to the photo log, it indicates</p> <p>8 that's the 2257 cabinets, hard copies. See that photo</p> <p>9 log?</p> <p>10 A. Yes, I do.</p> <p>11 Q. So that would coincide with that picture?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Now, that picture does not depict an area that</p> <p>14 appears to be open to the general public, does it?</p> <p>15 MS. WYER: Objection; foundation.</p> <p>16 A. I wouldn't know.</p> <p>17 Q. (By Mr. Murray) Well, does it -- is there any</p> <p>18 indicia of a premises that is open to the general</p> <p>19 public in that picture?</p> <p>20 MS. WYER: Objection.</p> <p>21 A. It's a very poor quality photograph, and about</p> <p>22 the only thing I can make out are the file cabinets</p> <p>23 and maybe a printer. The rest of it is pretty dark.</p> <p>24 Q. (By Mr. Murray) In any case, it is true, is</p> <p>25 it not, that, absent 2257 and its implementing</p>	<p>(10:52-10:54)</p> <p>1 A. Yes.</p> <p>2 Q. -- tacked to the wall?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And look at the next page.</p> <p>5 A. Okay.</p> <p>6 Q. That appears to be a room with a table and</p> <p>7 chairs and a microwave oven, correct?</p> <p>8 A. Uh-huh. The photo log described it as a break</p> <p>9 room.</p> <p>10 Q. Okay. And by "break room," where employees</p> <p>11 might go to have their lunch type thing? That's what</p> <p>12 you mean by "break room"?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Well, it is true that, both with respect to</p> <p>15 the photograph on page 122 and on 123, those are areas</p> <p>16 of a premises where, absent 2257, if an FBI agent</p> <p>17 wanted to enter those areas and he didn't have</p> <p>18 voluntary consent and he didn't have exigent</p> <p>19 circumstances, he would have to obtain a search</p> <p>20 warrant to enter those premises to conduct a criminal</p> <p>21 investigation, correct?</p> <p>22 MS. WYER: Objection. Lack of foundation</p> <p>23 and calls for speculation.</p> <p>24 A. Any location that we went into was determined</p> <p>25 by the producer. They determined where the records</p>